

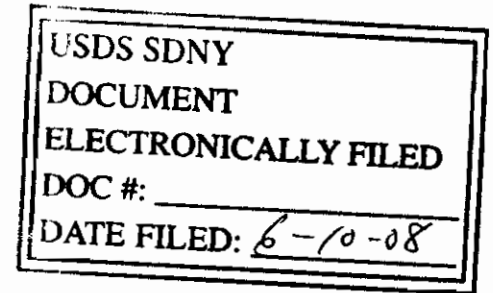
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MEMO ENDORSED

June 9, 2008

Via facsimile (212)805-7949
Honorable Justice P. Kevin Castel
United State District Court
Southern District of New York
500 Pearl Street
New York, New York 10007

Re: United National Specialty v. 1854 Monroe, *et al.*
Docket No. 07 CV 10934 (PKC) (THK)

Dear Judge Castel:

We represent the co-defendant, Eulalia Balaguer in this declaratory judgment action. We write in regard to the request of co-defendant's counsel seeking a stay for the purpose of vacating the default against 1854 Monroe Avenue.

As we have previously stated, it is our position that the plaintiff's claim has no merit in that there was an untimely – and therefore, null – disclaimer. The New York cases support our contention. See, First Financial Insurance Company v. Jetco Contracting, 1 NY3rd 64, 769 NYS2d 459 (2003) and Sirius American Insurance Company v. Vigo Construction Corp. et al., 48 AD3rd 450, 852 NYS2d 176 (2nd Dept. 2008).

The presence of recently retained counsel by 1854 Monroe Avenue raises significant questions regarding the willfulness, or lack of same, on the part of the defendant in not appearing in a timely manner. Since the default may well serve as a basis for the carrier to avoid its contractual obligation, it is urged that the opportunity for a Rule 55(c) and or Rule 60(b)(3) application be provided and the additional time be granted. Of course, the thrust of our opposition and cross motion for summary judgment will be substantially altered should the

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default be vacated. It is notable that an underlying allegation in the carrier's complaint, is by its own admission, incorrect. It is also noteworthy that the single misstated fact regarding the date of the disclaimer -- August 2, 2007 versus August 21, 2007 -- runs to the gravamen of the matter and is the one single fact upon which the carrier's case might very well fail.

We, therefore, join in co-defendant's application. Since the substance of their motion will materially alter the nature of our opposition and cross motion for summary judgment, it is requested that co-defendant be directed to file their papers one week before our submission.

Respectfully submitted,

FELDMAN, KRONFELD & BEATTY

By:


MICHAEL C. BEATTY (4144)

MCB:ab

cc: Miranda Sokoloff Sambursky Slone Verveniotis

ATTN: Steven Verveniotis

Via facsimile 516-741-9060

McDermott & McDermott

ATTN: Michael J. McDermott, Esq.

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*The application of
defendant Balaguer is - defendant
to move a ~~disposition~~ judgment
against whom judgment
has been entered to respond
to a summary judgment
motion which is not
addressed to it is
DENIED.
SO ORDERED
JTB
USDC
6-9-08*